

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA**

BARRY HATHAWAY,

Petitioner,

v.

**Civil Action No. 3:07cv135
(Judge Bailey)**

WARDEN JOHN R. OWENS,

Respondent.

TRANSFER ORDER

Petitioner is a federal prisoner who seeks a writ of habeas corpus under 28 U.S.C. § 2241. The proper respondent in habeas corpus cases is the petitioner's warden or immediate custodian. Rumsfield v. Padilla, 542 U.S. 426 (2004). At the time Mr. Hathaway filed this pleading, he was incarcerated at FCI Williamsburg which is located in Salters, South Carolina. Inasmuch as that facility is not within this judicial district, the court lacks personal jurisdiction over Mr. Hathaway's custodian.

As well, it appears that the plaintiff's petition raises issues which should be addressed in a civil rights complaint, rather than in a habeas petition, as they address the conditions of his confinement. If so, pursuant to 28 U.S.C. § 1391, appropriate venue in this matter is where a substantial part of the events or omission giving rise to the claim occurred. Because all of the events complained of occurred in Massachusetts, venue does not lie in the Northern District of West Virginia.

Based on the foregoing, this court lacks jurisdiction over petitioner's custodian for purposes of 28 U.S.C. § 2241 and does not have proper venue to consider the petitioner's claims under a civil rights complaint. The Court finds it in the interests of justice and judicial economy to transfer the case.

Therefore, this case is hereby TRANSFERRED to the United States District for the District of South Carolina for all further proceedings. 28 U.S.C. § 1406(a). Whether petitioner should be permitted to proceed is a determination to be made by the transferee court.

The Clerk of this Court is directed to mail a copy of this Order to the petitioner, and to mail the original court file to the Clerk of the Court of the United States District Court for the District of South Carolina, 85 Broad St., Charleston, SC 29401. Petitioner is hereby directed to send any further correspondence or filings in this matter to that address.

IT IS SO ORDERED.

ENTER: October 18, 2007

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE